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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,177	07/11/2001	Steven Paul Jones	ROC920010100US1	9365
7590	12/20/2005		EXAMINER	
Robert R. Williams IBM Corporation, Dept. 917 3605 Highway 52 North Rochester, MN 55901-7829			RUHL, DENNIS WILLIAM	
			ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/903,177
Filing Date: July 11, 2001
Appellant(s): JONES, STEVEN PAUL

Robert R. Williams
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/21/05.

A

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Grounds of rejection to be reviewed upon appeal*

The appellant's statement of the grounds of rejection on appeal in the brief is correct. The examiner notes and confirms the fact that applicant has chosen to not appeal the 103 rejections contained in the Final rejection.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

4,469,149	Walkey et al.	9-1984
20020046117	Marion	4/18/02

"Minnesota Representative Proposes Mileage Tax to Replace Gas Tax, 1/4/2001

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1,22,36, are rejected under 35 U.S.C. 102(b) as being anticipated by the article entitled "Minnesota Representative Proposes Mileage Tax to Replace Gas Tax" (1/4/00). The article discloses the step of selling fuel, where the tax the government will charge for the fuel purchase depends on the mileage one drives. A chip (storage device) in the fuel tank stores vehicle data, and a chip in the fuel pump calculates the amount of the tax, which results in an end price for the fuel purchase. The step of transmitting the data from the vehicle to the pump computer with some kind of transmitter is inherent in the article. Somehow the data from the gas tank chip has to be transmitted to the fuel pump so that a price can be calculated.

2. Claims 22,28-33 rejected under 35 U.S.C. 102(b) as being anticipated by Walkey et al. (4469149).

For claim 22,28,29,30,33, Walkey discloses a system for determining the price of fuel based on data transmitted from the vehicle to the pump. Walkey discloses a storage device 10, a transmitter 20. The pump determines the price of fuel based on the data transmitted to the pump. See column 5, lines 3-6. The price for fuel will be determined based on the grade of fuel one desires.

For claims 31,32, the claimed cylindrical collar is considered to be the aluminum backing of the bar code. This is the same as a collar. The actual stripes that make up the bar code are laid down on the aluminum backing.

3. Claims 22,33-35, are rejected under 35 U.S.C. 102(e) as being anticipated by Marion (2002/0046117).

Marion discloses a system where a transponder in a vehicle can communicate wirelessly with a fuel pump to transmit data indicating how much fuel is in the tank and the fuel pump has a computer that will determine how much it will cost to fill up the tank. The storage device/transmitter is 64 and the pump is 18 (has a computer). See paragraphs 230-243.

(11) Response to Argument

With respect to the 35 USC 101 rejection, the rejection has been withdrawn in view of recent decisions by the Board of Appeals at the USPTO regarding statutory subject matter.

With respect to the argument concerning the article "Minnesota Representative Proposes Mileage Tax to Replace Gas Tax" the argument is not persuasive. Applicant has argued that the limitation of "storing vehicle specific data in the vehicle" is not found in the prior art because the prior art only stores *miles driven by a vehicle* and this cannot be interpreted as "vehicle specific data". Applicant has made the argument that "vehicle specific data clearly means data that identifies what particular category the particular vehicle is in" (see page 15 of the Brief). The examiner feels that applicant is arguing a narrow definition for this term where the claim does not reflect this definition and this definition was not specifically set forth in the specification. The specification as originally filed on page 7 states,

"In block 203, the vehicle sends vehicle specific data to the pump's computer. Such data could contain the "vehicle identification number" (VIN), EPA mileage rating,

vehicle weight, emissions rating, information pertaining to alternative fuel capability, information pertaining to gas/electric hybrid design, or any other factors that may be deemed relevant to fuel prices by a regulatory agency.”.

On page 2 it is stated:

“This invention comprises a method and apparatus that provide the mechanism in which the per unit price of fuel can be made dependent upon factors deemed to be important for conservation or other ecological reasons. For example, such factors could include U. S. Environmental Protection Agency (EPA) gas mileage of the vehicle, weight of the vehicle, or quantities of undesirable emissions of the vehicle as determined by an authorized agency. Consideration for vehicles that use technologies deemed to have ecological or conservation potential such as hybrid gas/electric or gas/fuel cell could be factors as well.”

These disclosures in the specification are not taken as a specific statement by the applicant that the term “vehicle specific data” should be accorded a specific definition. The disclosure of “or other factors that may be deemed relevant to fuel prices by a regulatory agency” on page 7 of the specification is evidence that the term “vehicle specific data” is not limited to the definition being argued by applicant, but is actually a broader term that has been argued. The examiner is not going to read limitations into the claims with respect to the term “vehicle specific data”.

With respect to the argument that the term specific means a category of vehicle, what about the embodiment where the gas mileage is the vehicle specific data? It is entirely possible that a sedan type of vehicle could have the same gas mileage as a

truck, and they would not reasonably be considered as falling into the same category of vehicle. One of ordinary skill in the art would not reasonably consider a sedan type of vehicle such as a Honda™, to be in the same class or category as a truck like an F-150 Ford™ truck. Additionally the weight of the vehicle is not necessarily defining a particular category of vehicle because the weight of the vehicle does not define a category of vehicle. A small truck and a sports car can have the same weight, but they would not reasonably be considered as falling into the same category of vehicle, because cars are not the same as trucks.

The examiner takes the position that Odometer readings for vehicles are vehicle specific data as they represent the miles the vehicle has been driven. The examiner respectfully disagrees with applicant's interpretation of the term "vehicle specific data", which is a broad term and can mean almost anything. The examiner also notes that the term "specific" is known to have a more complete definition than presented by applicant.

From www.dictionary.com, the definition for "specific" is

7 entries found for *specific*.

spec·if·ic  [Pronunciation Key](#) (spĕk'ĭfĭk)
adj.

1. Explicitly set forth; definite. See Synonyms at explicit.
2. Relating to, characterizing, or distinguishing a species.
3. Special, distinctive, or unique: *specific qualities and attributes*.
4.
 - a. Intended for, applying to, or acting on a particular thing: a *specific remedy*

for warts.

- b. Concerned particularly with the subject specified. Often used in combination: "age-specific voting patterns" (A. Dianne Schmidley).
- 5.
 - a. Designating a disease produced by a particular microorganism or condition.
 - b. Having a remedial influence or effect on a particular disease.
- 6. Immunology. Having an affinity limited to a particular antibody or antigen.
- 7.
 - a. Designating a customs charge levied on merchandise by unit or weight rather than according to value.
 - b. Designating a commodity rate applicable to the transportation of a single commodity between named points.

n.

The definition for "specific" taken from the Merriam Webster Online Dictionary is set forth as:

Main Entry: **1spe·cif·ic** ►
Pronunciation: spi-'si-fik
Function: *adjective*
Etymology: Late Latin *specificus*, from Latin *species*
1 a : constituting or falling into a specifiable category **b** : sharing or being those properties of something that allow it to be referred to a particular category
2 a : restricted to a particular individual, situation, relation, or effect <a disease *specific* to horses> **b** : exerting a distinctive influence (as on a body part or a disease) <*specific* antibodies>
3 : free from ambiguity : ACCURATE <a *specific* statement of faith>

4 : of, relating to, or constituting a species and especially a biologic species
5 a : being any of various arbitrary physical constants and especially one relating a quantitative attribute to unit mass, volume, or area b : imposed at a fixed rate per unit (as of weight or count) <specific import duties> -- compare AD VALOREM
synonym see SPECIAL, EXPLICIT
- **spe·cif-i·cal·ly** $\ddot{\text{e}}\text{-fi-k(‐)lE/}$ adverb

The well-known definitions for the term "specific" also include "*restricted to a particular individual, situation, relation, or effect*" and "*special, distinctive, or unique*" and this differs from what applicant stated this term must be defined as. The mileage that a particular vehicle has driven can properly be construed to satisfy the limitation of "vehicle specific data" in the opinion of the examiner because this is data that is specific to that vehicle.

With respect to the argument traversing the 102 rejection in view of Walkey the argument is not considered to be persuasive. Applicant has argued that the reference does not disclose "*a fuel pump computer, which determines a per unit price for the fuel, using, at least in part, said data*". In Walkey, the grade of fuel is one type of data that is sent to the fuel pump during a fueling transaction. Column 5, lines 21-23 disclose that the fuel pump will interrogate the vehicle through a data link to get the fuel type desired. The fuel grade could also be included in the vehicle identification code as well, which is read by the fuel pump. When the vehicle data identifies that only super unleaded fuel is to be put into the vehicle, this will effectively result in the price per unit of the fuel being determined because the pump will retrieve and display the price for super unleaded

fuel, which is a higher per unit price than regular unleaded is. The choice of fuel grade determines the fuel price per unit you will have to pay and the pump is the element that determines the price for the fuel based on the data from the vehicle. When the fuel pump receives the data that indicates the grade of fuel to be used, the pump must "determine" the price per unit because it must be displayed to the customer and the pump must know what the per unit price is, so that the correct amount can be charged for the fuel. Applicant's argument is found to be non-persuasive because Walkey does disclose what has been argued.

With respect to the traversal of the Marion reference, applicant is arguing the same limitation that was argued in Walkey, namely that Marion does not disclose "*a fuel pump which determines a per unit price for the fuel, using, at least in part, said data.*" The issue is similar to that in Walkey in the sense that when the fuel pump requests information from the vehicle such as fuel grade to provide an estimate of the cost for refueling, this results in the fuel pump determining the price per unit for the fuel. Paragraph 238 discloses "In order to do so, the type of fuel and fuel grade must be determined.". Also disclosed is that "the initial information received from the transponder may provide information on the type and grade of fuel desired for fueling." When the fuel pump receives the data that indicates the grade of fuel to be used, the pump must "determine" the price per unit because it must be displayed to the customer and the pump must know what the per unit price is, so that the correct amount can be calculated for the refueling of the vehicle. Applicant's argument is found to be non-persuasive because Marion does disclose what has been argued.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



DENNIS RUHL
PRIMARY EXAMINER

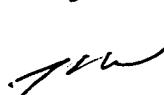
DR
December 10, 2005

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